

Appeal from the decision of the California State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease R 3818.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals --Oil and Gas Leases: Termination

In support of reinstatement of an oil and gas lease that has terminated automatically as the result of the lessee's failure to pay the annual rent on or before the anniversary date of the lease, the petitioner/lessee must show either that the late payment was not due to a lack of reasonable diligence or that the late payment was otherwise justified.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals --Oil and Gas Leases: Termination

Reasonable diligence ordinarily requires mailing the annual rental payment for a lease sufficiently in advance of the anniversary date of the lease to account for normal delays in the collection, transmittal, and delivery of the mail. The mailing of the annual rental payment on the anniversary date of the lease does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals --Oil and Gas Leases: Termination

The untimely payment of the annual rent for a lease may be justified if proximately caused by extenuating circumstances

outside the lessee's control which occurred at or near the anniversary date of the lease; however, such justification is not shown by a lessee's assertion that he was unavoidably detained during business travel near the anniversary date of a lease.

APPEARANCES: Vernon I. Berg, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Vernon I. Berg has appealed the October 8, 1982, decision of the California State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease R 3818. This lease terminated automatically on its anniversary date, May 1, 1982, because appellant (lessee) failed to pay the annual rental for the lease on or before this date. 43 CFR 3108.2-1(a). BLM received appellant's rental payment on May 6, 1982.

Upon his receipt of BLM's termination notice, appellant filed a timely petition for reinstatement of the lease in which he explained the late rental payment:

I was called out of town on business two weeks prior to the due date of May 1, 1982, and did not make arrangements to leave a signed check for my Secretary to mail out in advance of the due date. Upon arrival back at the office on May 1, 1982, I immediately made the necessary check out and mailed it that same day.

BLM rejected the petition on the grounds that appellant showed neither reasonable diligence nor justification for his lack of reasonable diligence in the payment of his lease rent, and, thus, did not satisfy either of the alternative conditions for reinstatement of a lease provided in 43 CFR 3108.2-1(c).

In his statement in support of this appeal, appellant augmented his explanation of the late rent payment to BLM with the following information:

I did not make prior arrangements to mail the check in advance of the due date as I fully intended to return to my office a good 10 days prior to the due date. I was unavoidably detained due to repairs that had to be made on my vehicle. I am not in the practice of taking my Business Checking account book with me on trips so I did not have a check available to send from my location. I had expected to return in plenty of time to send the check so I had not left a signed check for my Secretary to use as payment. I had only expected to be out of town over a weekend and accordingly I did not feel the necessity to make prior arrangements for the check. Reference is made to the fact that El Centro, Ca. mail is routed through Palm Springs, Ca. from the

El Centro, Ca. drop site, however, we have been assured by the Postal Department that this is not supposed to cause any delays in the normal deliveries of our mails. Surely I can not be held responsible for delays in the Postal System.

[1] As BLM explained in its decision, there are two alternative bases for the reinstatement of an oil and gas lease that has terminated automatically, in accordance with 30 U.S.C. § 188(b) (1976) and 43 CFR 3108.2-1(a), as the result of the lessee's failure to pay the annual rent on or before the anniversary date of the lease. The first is BLM's finding that the lessee exercised reasonable diligence in attempting timely payment of the rent; the second is BLM's finding that lessee's lack of reasonable diligence was justified. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c)(1). A petitioner/lessee seeking reinstatement of a lease that has terminated automatically bears the burden of showing circumstances which support one of these findings. 43 CFR 3108.2-1(c)(2).

[2] The record reveals that appellant mailed the rent payment for lease R 3818 on May 1, 1982, the anniversary date of the lease. BLM concluded that this circumstance did not show reasonable diligence by appellant. This Board agrees. "Reasonable diligence," as described in 43 CFR 3108.2-1(c)(2), "normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." The Board has previously held that this standard is not met by a lessee who mails the rental payment on the anniversary date of the lease. E.g., Liberty Oil and Gas Corp., 64 IBLA 277 (1982). There are no circumstances evident in the record of this case to cause the Board to reach a different conclusion. 1/

[3] The Board also agrees with BLM's conclusion that appellant did not show justification for his lack of reasonable diligence in the payment of the annual lease rent. In this regard the Board has previously stated that an "[u]ntimely payment of the annual rental may be justifiable for purpose of reinstatement if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease." James M. Chudnow, 62 IBLA 13, 15 (1982). Applying this standard the Board, on numerous occasions, has held that travel, either for business or pleasure, does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his or her absence. *Id.* (and cases cited therein). Appellant's claim that he was unavoidably detained in travel for at least 10 days, "due to repairs that had to be made on [his] vehicle," is void of sufficient detail to persuade this Board that appellant's late rental payment was "proximately caused by extenuating circumstances outside [his] control."

1/ Appellant's reference to "delays in the Postal System," in his statement of reasons, merely ignores the fact that appellant did not mail his rent payment until the anniversary date of the lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed. 2/

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge.

2/ We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed Jan. 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional basis for the reinstatement of a lease. New subsection (d) of 30 U.S.C. § 188 provides in part:

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

"(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

"(ii) fifteen months after termination of the lease."

Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of the Act where denial of reinstatement under 30 U.S.C. § 188(c) (1976) is upheld by the Board on behalf of the Secretary after enactment, appellant should inquire promptly at the California State Office of BLM if he wishes to avail himself of this provision, as the 120-day period from enactment lapses May 12, 1983.

